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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

WARD WHITE,

Plaintiff,

vs.

UNITED HERITAGE PROPERTY &
CASUALTY COMPANY,

Defendant.

CASE NO.:

COMPLAINT

BREACH OF CONTRACT

Claim over \$75,000

Demand \$100,000

DEMAND FOR JURY TRIAL

COMES NOW the Plaintiff, represented by the undersigned attorney, and allege as follows:

VENUE AND JURISDICTION

1. At all times material hereto, WARD WHITE (hereafter “WHITE”) was an individual domiciled in Oregon counties and owning property in Multnomah County, Oregon.
2. At all times material hereto, UNITED HERITAGE PROPERTY & CASUALTY COMPANY (hereafter “UNITED”), was an insurance corporation authorized to issue

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insurance and conduct business in the State of Oregon, but is a foreign carrier with its principal place of business headquartered in another state.

3. The claim and controversy in this matter exceeds \$75,000.00
4. The acts and/or omissions that form the basis of this complaint took place in the State of Oregon, this Court has jurisdiction over this matter pursuant to 28 USC §1332, and Venue is proper in the Portland Division.

FACTS MATERIAL TO WHITE’S CLAIMS FOR RELIEF

5. WHITE was the beneficial owners of certain real property located in Multnomah County, Oregon, and commonly referred to as 335 SE 80th Avenue, Portland, OR (hereafter “the Property”).
6. The Property contained a residential structure rented to tenants (hereafter “the Structure”).
7. At all times material to this Complaint, the Property was insured by a Home and Family Property Policy issued by UNITED, specifically described as policy no.: HF-304764-0001 (hereafter “the Policy”).
8. The Policy listed WHITE as a named insured.
9. The Policy insured the Property on a named peril basis.
10. At all times material to this Complaint, all premiums due from WHITE were paid and the Policy was in full force and effect.
11. In consideration for payment of premiums by WHITE, the Policy promised to provide coverage for direct physical loss to the Structure caused by fire, and additional coverages set forth in the Policy and subject to the terms and condition in the Policy.

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12. On or about April 18, 2021, WHITE'S Structure suffered direct physical loss caused by fire (hereafter "the Loss").
13. On or about April 18, 2021, an adjacent building to the Property suffered a fire (hereafter "the Fire").
14. The Fire posed a risk of spreading to adjacent buildings, including the Property.
15. Embers from the Fire contacted the roof of the Property.
16. Emergency response vehicles responded to the Fire.
17. Emergency response vehicles took fire mitigation steps to stop the spread of the Fire, including but not limited to:
 - a. Locating emergency vehicles onto the Property;
 - b. Spraying the roof of the Property with substantial amounts of water; and
 - c. Spraying the Fire with substantial amounts of water.
18. These fire mitigation efforts resulted in the very same water used to mitigate the spread of Fire, to enter the Property and cause substantial amounts of damage.
19. WHITE filed a claim with UNITED in connection with the Loss.
20. UNITED assigned Claim Number 2213801224 (hereafter "the Claim").
21. UNITED opened an investigation into the Claim.
22. UNITED denied coverage for the Loss in its entirety.
23. UNITED asserted that the Loss was not caused by a named peril insured by the Policy.
24. WHITE provided UNITED two opportunities to reverse its coverage decision before initiating this action.

25. UNITED maintained its denial, in part, because:

“[L]oss” is defined in the Policy as the accidental “loss” of or damage to the insured property identified in the Policy Declarations as 335 SE 80th Avenue, Portland, OR. The fire was at an adjacent building, not the Insured Premises or any insured property. Although “fire” is one of the 7 named perils, the fire is not a “loss” because property insured by the Policy was not damaged by fire.

The water that damaged the Insured Premises is not one of the named perils either. For example, this water was not caused by the accidental discharge or overflow of water.

26. UNITED also responded with additional reasons for denial, including that the Loss was explicitly excluded from coverage as either (a) surface water damage, or (b) damaged caused by water beneath the surface of the ground.

27. WHITE has performed all conditions precedent necessary for an actual cash value payment under the Policy.

28. WHITE has cooperated with UNITED’s requests during the investigation and adjustment of the Loss or Claim.

29. As a result of the breaches of the Policy alleged herein, WHITE has been forced to hire an attorney to represent him in this matter. WHITE is entitled to recover his reasonable attorney fees incurred herein under ORS 742.061.

30. WHITE is entitled to recover prejudgment interest on his damages at the legal rate of 9% per annum.

BREACH OF CONTRACT: FAILURE TO PAY– STRUCTURE DAMAGES

31. WHITE herein re-allege and re-incorporate all preceding paragraphs into this cause of action.

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32. The Loss is not otherwise excluded by the Policy.
33. WHITE estimates a minimum of \$100,000, but an amount to be more fully determined at trial, for the cost to replace the damages as a result of the Loss with like, kind, and quality materials.
34. UNITED has refused, failed, and neglected to issue any payment to WHITE as a result of the Loss.
35. UNITED's refusal to pay the covered damages as a result of the Loss is a material breach of the Policy.
36. UNITED's refusal to pay any amount as a result of the Loss may have prevented WHITE from complying with certain conditions precedent for coverage (i.e., ordinance or law coverage, or replacement cost coverage).
37. It was reasonably foreseeable that labor and materials would increase if UNITED refused to cover any damages for the Loss or Claim.
38. Any increasing costs of labor and materials faced by WHITE to repair/replace the damage caused by the Loss is a direct and natural result of UNITED's unreasonable denial of coverage and failure to pay the Claim.
39. As a result of UNITED's material breach of the Policy and acts preventing WHITE from compliance with conditions precedent under the Policy, WHITE has suffered an estimated \$100,000 in damages and an additional amount for consequential damages that will be determined at trial.

PRAYER

WHEREFORE, WHITE pray for a judgment including:

1. An estimated \$100,000 for the replacement cost damages to the Structure, but an amount to be more fully determined at trial;
2. Consequential damages that will be determined at trial;
3. Costs and disbursements incurred herein;
4. Attorneys' fees pursuant to ORS 742.061; and
5. Prejudgment interest of 9%.

DATED: October 18, 2021

GOWER LAW LLC

s/ Nick Gower

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Attorney for Plaintiffs